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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 93-107
	)	
DAVID A. RINGER	)	File Nos. BPH-911230MA
	)	through
et al.	)	File No. BPH-911231MC
	)	
For Construction Permit	)	
Channel 280A	)	
Westerville, Ohio	)	

To: Administrative Law Judge  
Walter C. Miller

**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. By Hearing Designation Order, 8 FCC Rcd 2651 (1993), the Chief, Audio Services Division, designated the above-captioned applications for hearing. It was directed therein that the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants. The Mass Media Bureau's proposed findings of fact and conclusions of law are limited to the comparative coverage aspect of the standard comparative issue.

**Proposed Findings of Fact**

2. The remaining applicants in this proceeding are David A. Ringer (Ringer), ASF Broadcasting Corporation (ASF), Wilburn Industries, Inc. (Wilburn), Shellee F. Davis (Davis), and Ohio Radio Associates, Inc. (ORA). The source of the following data

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is Joint Engineering Exhibit 1, which was received into evidence at the Evidentiary Admissions Session on August 20, 1993. (Tr. 42)

3. The total areas and populations within each applicant's proposed 1 mV/m contour are as follows:

<u>Total Areas and Populations Served</u>		
<u>Applicant</u>	<u>Area (Sq. Km.)</u>	<u>Population</u>
Ringer	2,363	604,567
ASF	2,052	607,783
Wilburn	1,828	404,608
Davis	2,319	629,837
ORA	2,476	597,617

4. In the daytime, all proposed service areas receive at least five other aural services. At night, ORA will provide a fourth aural service to 19 square kilometers and 183 persons and a fifth aural service to 61 square kilometers and 2,251 persons. No other applicant proposes nighttime service to an underserved area.

#### Proposed Conclusions of Law

1. Where the areas and populations within the applicants' proposed coverage areas are already well-served, the Commission has awarded a slight coverage preference only to those applicants

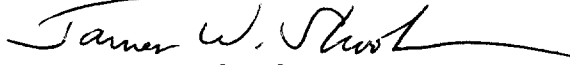
proposing substantially greater overall coverage than their competitors. See Simon Geller, 90 FCC 2d 250, 268-69, 276 (1982), where a slight preference was awarded to an applicant proposing to serve four times more area and 315,000 more people than its competitor. For less significant differences, a very slight preference has been awarded. See, e.g., Barton Broadcasting Co., 104 FCC 2d 785, 791 (Rev. Bd. 1986), where a very slight preference was awarded to an applicant proposing to serve 44,215 or 27% more people. Where the differences are insignificant, no preference is awarded. See Barnes Enterprises, Inc., 69 FCC 2d 1957, 1962-63 (Rev. Bd. 1978), review denied, FCC 79-451, released July 15, 1979, where no preference was awarded to an applicant proposing to serve 12,000 persons or 5% more people. In addition, a very slight preference may be awarded to an applicant providing a new fourth and fifth nighttime service to nominal populations. See Northern Sun Corp., 100 FCC 2d 889, 894 (Rev. Bd. 1985), where a very slight preference was awarded to an applicant for provision of a second nighttime aural service to 242 persons and a third and fourth service to 391 more persons than its opponent.

2. For overall service, Davis, ASF, Ringer and ORA propose to serve between 193,009 (or 48%) and 225,229 (or 56%) more persons than Wilburn. Accordingly, Davis, ASF, Ringer and ORA should receive a very slight preference relative to Wilburn for overall service superiority. The differences between Davis, ASF,

Ringer and ORA are too insubstantial to warrant any preference vis-a-vis each other. For its fourth and fifth nighttime service to 183 and 2,251 more persons, respectively, ORA merits a very slight preference relative to Davis, ASF and Ringer. In comparison with Wilburn, ORA merits a slight preference because of its overall coverage advantage as well as its advantage in service to underserved populations.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
James W. Shook  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554

October 25, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, hereby certifies that she has on this 25th day of October, 1993, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" to:

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W., Suite 510  
Washington, D.C. 20036

James A. Koerner, Esq.  
Baraff, Koerner, Olender & Hochberg, P.C.  
5335 Wisconsin Avenue, N.W., Suite 300  
Washington, D.C. 20015-2003

Eric S. Kravetz, Esq.  
Brown, Finn & Nietert, Chartered  
1920 N Street, N.W., Suite 660  
Washington, D.C. 20036

Dan J. Alpert, Esq.  
1250 Connecticut Avenue, N.W., 7th Floor  
Washington, D.C. 20036-2603

John W. Hunter, Esq.  
Stephen T. Yelverton, Esq.  
McNair & Sanford, P.A.  
1155 15th Street, N.W., Suite 400  
Washington, D.C. 20005

Michelle C. Mebane  
Michelle C. Mebane